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Attorneys for Defendants  
WELLS FARGO BANK, N.A. and  
THE BANK OF NEW YORK  
MELLON erroneously sued as "THE  
BANK OF NEW YORK MELLON  
f/k/a The Bank of New York as  
Trustee for the WORLD SAVINGS  
REMIC 23, MORTGAGE PASS-  
THROUGH CERTIFICATES,  
SERIES 23 TRUST"

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SUSAN CALIMPUSAN and MARTIN  
CALIMPUSAN,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., NBS  
DEFAULT SERVICES, LLC, THE  
BANK OF NEW YORK MELLON  
f/k/a THE BANK OF NEW YORK as  
Trustee for the WORLD SAVINGS  
REMIC 23, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
23 TRUST and DOES 1-100 inclusive,

Defendants.

CASE NO.: 2:15-cv-08452

**NOTICE OF REMOVAL BY  
DEFENDANTS WELLS FARGO  
BANK, N.A. AND THE BANK OF  
NEW YORK MELLON PURSUANT  
TO 28 U.S.C. § 1332**

**[DIVERSITY JURISDICTION]**

**TO PLAINTIFFS, THROUGH THEIR COUNSEL OF RECORD, THE  
CLERK OF THE ABOVE-ENTITLED COURT AND THE HONORABLE  
UNITED STATES DISTRICT JUDGE, AS ASSIGNED:**

**PLEASE TAKE NOTICE** that defendant WELLS FARGO BANK, N.A.

(successor by merger with Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB) (“Wells Fargo”) and defendant THE BANK OF NEW YORK MELLON erroneously sued as “THE BANK OF NEW YORK MELLON f/k/a The Bank of New York as Trustee for the WORLD SAVINGS REMIC 23, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 23 TRUST” (“BNYM”) (collectively “Defendants”), hereby provides this Notice of Removal pursuant to U.S.C. §§ 1441(b) & 1332, based on diversity of citizenship. The action is hereby removed to this Court from the state court, as more particularly set forth below.

## 1. THE STATE COURT ACTION

On September 21, 2015, plaintiffs Susan Calimpusan and Martin Calimpusan commenced an action entitled, *Susan Calimpusan et al. v. Wells Fargo Bank, N.A. et al.*, in the Superior Court of the State of California, County of Los Angeles, Case No. NC060291 (the “State Court Action”). Defendants Wells Fargo and BNYM did not appear in the State Court Action. A copy of the Complaint is attached hereto as Exhibit A. Defendant NBS Default Services, LLC (“NBS Default”), appeared in the State Court Action only to file its Declaration of Non-Monetary Status (“DNMS”), which was filed on October 9, 2015 (*See* Exhibit B). Attached collectively hereto as Exhibit B are all other documents in Wells Fargo’s possession from the State Court Action.

## 2. COMPLETE DIVERSITY

### A. DIVERSITY OF CITIZENSHIP.

This Court has jurisdiction of this case under 28 U.S.C. § 1332 because plaintiffs’ citizenship and that of Wells Fargo Bank, N.A., the only real-party-in-interest and non-fraudulently joined defendant in this action, are entirely diverse and the amount in controversy exceeds \$75,000.00.

#### i. Plaintiffs’ Citizenship.

Plaintiffs Susan Calimpusan and Martin Calimpusan are California citizens,

as they plead they are domiciled and reside at and own real property situated at 10504 Tremont Lane, Bellflower, California 90706 - *i.e.*, the subject property in this action (“Property”). (Comp. ¶¶1, 41; see also Exhibit C – Deed of Trust, p. 14 ¶32). Plaintiffs also confirm that they own and occupy the Property as their primary residence as they claim a homeowner’s exemption, which is only available to owners who occupy their homes as their principal place of residence on January 1, and each year thereafter. *See* 2015 Los Angeles County Assessor information indicating a homeowner’s exemption was taken, Exhibit D, attached hereto.

Plaintiffs’ California domicile/citizenship is also demonstrated through the personal bankruptcy filing that plaintiffs’ initiated in this District in 2011 and dismissed in October 2014. On May 23, 2011, plaintiffs filed a Voluntary Chapter 7 Petition in the United States Bankruptcy Court, Central District of California, Case No. 2:11-bk-32191-BB. On page one of their petition, plaintiffs aver that their address is the subject property address and that they reside in Los Angeles County. At “Information Regarding the Debtor-Venue” on page two of the petition, plaintiffs also aver that “Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.” That domicile made this district the appropriate venue for a personal bankruptcy. 28 U.S.C. § 1408. A true and correct copy of plaintiffs’ petition is attached hereto as Exhibit E.

Upon information and belief, plaintiffs in this action reside in California with the intention to remain indefinitely. “A person’s domicile is her permanent home, where she resides with the intention to remain or to which she intends to return.” *See e.g., Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. Cal. 2001); *Heinz v. Havelock*, 757 F. Supp. 1076, 1079 (C.D. Cal. 1991) (residence and property ownership is a factor in domicile for diversity jurisdiction); *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (“Residence

1 alone is not the equivalent of citizenship, but the place of residence is prima facie  
2 the domicile.”).

3 **ii. Defendant Wells Fargo Bank, N.A.’s Citizenship.**

4 Plaintiffs name Wells Fargo Bank, N.A. as a defendant in the action.  
5 Plaintiffs obtained their loan from World Savings Bank, FSB in 2006. (Comp. ¶7).  
6 Effective December 31, 2007, World Savings Bank, FSB, changed its name to  
7 Wachovia Mortgage, FSB. (Exhibit F - Nov. 19, 2007 OTS Letter). Effective  
8 November 1, 2009, Wachovia Mortgage, FSB, was converted to Wells Fargo Bank  
9 Southwest, N.A., and merged into Wells Fargo Bank, N.A. (Exhibit G - Nov. 1,  
10 2009 OCC Certification Letter).

11 Pursuant to 28 U.S.C. § 1348, defendant Wells Fargo Bank, N.A., as a  
12 national banking association, is a citizen of the state where it is “located.” In 2006,  
13 the United States Supreme Court, after a thorough examination of the historical  
14 versions of § 1348 and the existing case law, held that “a national bank, for § 1348  
15 purposes, is a citizen of the State in which its main office, as set forth in its articles  
16 of incorporation, is located.” *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306-307  
17 (2006).

18 Wells Fargo, with its main office located in Sioux Falls, South Dakota, is a  
19 citizen of South Dakota. Attached hereto as Exhibit H are true and correct copies  
20 of the Articles of Association and the FDIC Profile for Wells Fargo Bank, National  
21 Association, as issued by the Office of the Comptroller of the Currency,  
22 Administrator of National Banks, reflecting that Wells Fargo (at Article II, § 1) has  
23 its main office in Sioux Falls, South Dakota. *See Rouse v. Wachovia Mortgage*,  
24 *FSB*, 747 F.3d 707, 715 (9th Cir. 2014) (“under § 1348, a national banking  
25 association is a citizen only of the state in which its main office is located”); *Wells*  
26 *Fargo Bank, N.A. v. WMR e-PIN, LLC*, 653 F.3d 702, 710 (8th Cir. Sept. 2, 2011);  
27 *Mireles v. Wells Fargo Bank N.A.*, 845 F. Supp. 2d 1034, 1059-61 (C.D. Cal.  
28 2012); *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d 1119, 1124 (N.D. Cal.

2010); *Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022, 1028 (N.D. Cal. 2010) (“Wells Fargo is a citizen of South Dakota for purposes of diversity.”); *Quiroga v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 58129, at \*2-\*3 (N.D. Cal. Apr. 25, 2014) (“Accordingly, Wells Fargo is a citizen only of South Dakota, where its main office is located.”).

iii. **Fraudulently-Joined Defendant The Bank of New York’s  
Citizenship.**

For the same reasons stated above for Wells Fargo, the Bank of New York Mellon (“BNYM”) is a citizen of the state in which its main office is located. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306-307 (2006). Attached as Exhibit I is a true and correct copy of the FDIC Profile and History for BNYM, which shows that the bank’s “main office” is located in New York, New York. Accordingly, BNYM is a New York citizen.

However, even if BNYM was not a diverse party, “fraudulently joined defendants will not defeat removal on diversity grounds.” *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). The citizenship of a fraudulently joined defendant is ignored for purposes of diversity. *Morris v. Princess Cruises, Inc.*, 236 F. 3d 1061, 1067 (9th Cir. 2001). Fraudulent joinder is conclusive where it is demonstrated that “there is no possibility that the plaintiff will be able to establish a cause of action in State court against the alleged sham defendant.” *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 807 (N.D. Cal. 1998). When testing the applicability of federal diversity jurisdiction, however, the Court is not limited to the four corners of the pleadings. *West America Corp. v. Vaughan-Bassett Furniture Co., Inc.*, 765 F.2d 932, 936 (9th Cir. 1985); *Charlin v. Allstate Ins. Co.*, 19 F. Supp. 2d 1137, 1140 (C.D. Cal. 1998) (to ascertain whether a joinder is fraudulent, this Court may “look beyond the pleadings”).

Here, BNYM is a fraudulently-joined entity that is to be disregarded for diversity purposes. Plaintiffs have not and cannot plead any facts that show a

1 connection between BNYM and the alleged wrongful conduct in this action.  
 2 Plaintiffs have not pled any facts showing that BNYM claims any interest in the  
 3 subject loan or property. Nor do they plead any facts showing that BNYM is in  
 4 any way involved in the foreclosure of the subject property. The foreclosure  
 5 documents show that Wells Fargo Bank, N.A. is the foreclosing beneficiary under  
 6 the Deed of Trust, and it acquired its interest in the loan and subject property as a  
 7 result of the name change and merger described above. (Exhs. F and G).

8 Accordingly, plaintiffs have no basis to assert any claims against BNYM and it is a  
 9 fraudulently joined defendant.

10 **iv. Defendant NBS Default Services, LLC's Citizenship.**

11 "NBS Default Services, LLC ("NBS Default")<sup>1</sup> is a single-member limited  
 12 liability company organized under the laws of the State of Texas and  
 13 headquartered in Texas. (See Exhibit J). A Limited Liability Company ("LLC") is  
 14 treated like a partnership for diversity purposes. Thus, the Court looks solely at the  
 15 citizenship of each member or partner of the LLC. *Carden v. Arkoma Assocs.*, 494  
 16 U.S. 185, 192-196 (1990); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d  
 17 894, 899 (9th Cir. 1990).

18 NBS Default's sole member, NBSC Group Holdings, Inc., is a holding  
 19 company incorporated in Texas with its principal place of business in Dallas,  
 20 Texas. All of NBSC Group Holdings' corporate officers are located in Dallas,  
 21 Texas, where they direct, control and coordinate all of the corporation's business  
 22 activities. The foregoing facts were accurately averred in the Declaration of  
 23 Lawrence J. Buckley, filed on February 13, 2012 in *Dan Rabadi v. World Savings*  
 24 *Bank FSB, et al.*, a case in the Central District of California, Case No. 5:12-cv-  
 25 00236-MWF-DTB ("Buckley Declaration"). Attached hereto as Exhibit J is a true  
 26 and correct copy of the Buckley Declaration. In light of the foregoing, NBS  
 27

28 <sup>1</sup> NBS Default is also known as "National Bankruptcy Services, LLC" in California. (See Exhibit J, ¶1).



1 Default is strictly a citizen of Texas.

2 Furthermore, it should be noted that NBS Default is simply a nominal party,  
3 because it replaced Golden West Savings Association Service Company, which  
4 was the original trustee as named in the Deed of Trust encumbering the property at  
5 issue. Moreover, NBS Default appeared in the State Court Action by filing a  
6 Declaration of Non-Monetary Status (“DNMS”) on October 9, 2015 and plaintiffs  
7 did not file any objection. (*See Exhibit B - DNMS and Exhibit K - Court Docket*).  
8 NBS Default has no financial interest in the subject property and its involvement in  
9 the non-judicial foreclosure is strictly within its ministerial role as the substituted  
10 trustee under the deed of trust, which is protected under California law. *Cabriales*  
11 *v. Aurora Loan Servs.*, No. C 10-161, 2010 U.S. Dist. LEXIS 24726, \*6-7 (N.D.  
12 Cal. Mar. 2, 2010). “A defendant is a nominal party where his role is limited to  
13 that of a stakeholder.” *Hewitt v. Stanton*, 798 F.2d 1230, 1233 (9th Cir. 1986).

14 In addition, actions related to the foreclosure filings and trustee’s sale are  
15 privileged, preventing a claim for damages against the trustee. *See* Cal. Civ. Code  
16 § 2924(d) (incorporating Cal. Civ. Code § 47(c)). This privilege bars any tort  
17 claim arising out of the statutorily-required mailing, publication, and delivery of  
18 notices in non-judicial foreclosure, and the performance of statutory non-judicial  
19 procedures, absent a showing of malice. *Kachlon v. Markowitz*, 168 Cal. App. 4th  
20 316, 339 (2008). Accordingly, NBS Default is a nominal party and should not be  
21 considered for purposes of diversity.

22 **v. Summary of Diversity of Citizenship.**

23 In light of the foregoing, complete diversity of citizenship exists under 28  
24 U.S.C. § 1332(a), for plaintiffs are California citizens, Wells Fargo is a citizen of  
25 South Dakota, BNYM is a citizen of New York and NBS Default is a citizen of  
26 Texas. Moreover, defendants BNYM and NBS Default are to be disregarded as  
27 fraudulently joined and/or nominal parties.

28 ///

**B. AMOUNT IN CONTROVERSY.**

Generally, “[t]he amount in controversy is determined from the allegations or prayer of the complaint.” *Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc. Before Trial* (2009), ¶2:450 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938), which held that an inability to recover an amount adequate to give the court jurisdiction does not oust the court of jurisdiction). “‘In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.’ ‘If the primary purpose of a lawsuit is to enjoin a bank from selling or transferring property, then the property is the object of the litigation.’” *Reyes v. Wells Fargo Bank, N.A.*, 2010 U.S. Dist. LEXIS 113821, at \*12-\*13 (N.D. Cal. June 29, 2010). See also *Chapman v. Deutsche Bank Nat’l Trust Co.*, 651 F.3d 1039, 1045 n.2 (9th Cir. 2011) (per curiam) (in an action seeking injunctive relief, the “amount in controversy is measured by the value of the object of the litigation” (citation and internal quotation marks omitted)); *O’Connor v. Bank United*, 594 Fed. Appx. 329 (9th Cir. 2015).

Moreover, where a Complaint seeks to invalidate a loan secured by a deed of trust, the amount in controversy is the loan amount. *Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022, 1028-1029 (N.D. Cal. 2010). In *Nguyen*, plaintiff sought to quiet title by cancelling the deed of trust and note on the property and sought rescission of the \$712,000.00 loan. The court held the loan amount, among other things, satisfied the amount in controversy requirement. *Id.* Similarly, in *Taguinod v. World Savs. Bank*, 755 F. Supp. 2d 1064 (C.D. Cal. 2010), the court held the amount in controversy requirement was established because the complaint sought rescission of a loan, the amount of which was shown by the attachment of the promissory note to the removal notice. *Id.* at 1068-1069.

On or about March 3, 2006, plaintiffs Susan Calimpusan and Martin Calimpusan (wife and husband) obtained a \$700,000.00 adjustable rate pick-a-



1 payment loan from World Savings Bank, FSB (“World Savings”) secured by the  
 2 property located at 10504 Tremont Lane, Bellflower, California 90706 (the  
 3 “Property”). *See* Exhibit C.

4 Plaintiffs defaulted on the loan in 2011, and Wells Fargo commenced  
 5 foreclosure proceedings in 2015. Plaintiffs allege that Wells Fargo and BNYM  
 6 have no beneficial interest in the loan and are not entitled to collect the loan  
 7 payments based on conclusory allegations that the loan was sold to BNYM as  
 8 trustee of the securitized trust and therefore not included in the assets acquired by  
 9 Wells Fargo as a result of the merger and that BNYM never received an effective  
 10 assignment of the loan and therefore is not a valid beneficiary. (Comp. ¶¶7-23, 27).

11 Plaintiffs also allege that all loans in the Trust have been paid off by a pool  
 12 insurance company or through credit enhancements or cross-collateralization and  
 13 therefore none of the loans, including plaintiffs’ loan, are in default. (Comp. ¶19).  
 14 Plaintiffs allege that Bank of New York Mellon is not a real party in interest or  
 15 person entitled to enforce the loan or collect the loan payments. *Id.* According to  
 16 plaintiffs, the Note and Deed of Trust have been split rendering the Deed of Trust  
 17 unenforceable and therefore none of the defendants have a beneficial interest in the  
 18 loan or the right to enforce the loan or collect the loan payments. (Comp. ¶20).  
 19 Plaintiffs allege that on July 21, 2015, NBS Default Services, LLC executed a  
 20 Notice of Default that included a declaration of compliance executed by Wells  
 21 Fargo. (Comp. ¶21). The Notice of Default was recorded by NBS Default on July  
 22 24, 2015, showing arrears of \$126,504.25 owing as of July 21, 2015. *Id.* and Exh.  
 23 D to Comp. *See also* Debt Validation Notice – Exh. E to Comp.) Plaintiffs allege  
 24 that prior to recording the Notice of Default, defendants did not provide them with  
 25 notice of their right to receive the documents specified in Civil Code Section  
 26 2923.55(b)(1). (Comp. ¶22).

27 Plaintiffs seek to quiet title to the property in their favor free and clear of any  
 28 encumbrances in favor of defendants. (Comp. ¶45). Plaintiffs also seek a

1 declaration that defendants have no right, estate, title, lien or interest in the subject  
 2 property. (Comp. ¶¶39, 45, Prayer ¶¶2, 3, 4). Plaintiffs also request “an order  
 3 forever enjoining the defendants, and each of them, their agents, representatives,  
 4 successors and assigns, from initiating and pursuing foreclosure activity against the  
 5 Plaintiffs relating to the Subject Property,” (Prayer, ¶1). Finally, plaintiffs seek  
 6 consequential and special damages, punitive damages, (Prayer ¶¶9, 10) and  
 7 reasonable attorneys’ fees and costs.

8 Should plaintiffs prevail in this action, they would void the loan, retain title  
 9 to the Property without any encumbrances, and permanently enjoin Wells Fargo  
 10 from taking any action under its secured interest in the Property – placing the  
 11 entire \$700,000.00 loan at risk, and certainly, at a minimum, the \$126,504.25  
 12 owing as of July 21, 2015. Consequently, as in *Reyes, Chapman, Nguyen and*  
 13 *Taguinod*, the loan amount and arrears, which plaintiffs seek to extinguish, and the  
 14 value of the Property clearly exceed the \$75,000.00 amount in controversy  
 15 threshold.

### 16 **3. TIMELINESS**

17 This Notice is timely, pursuant to 28 U.S.C. § 1446(b), because BNYM and  
 18 Wells Fargo received service of process of the State Court Action on September 29  
 19 and 30, 2015, respectively, via personal service. Defendants BNYM and Wells  
 20 Fargo have not appeared in the State Court Action. *Destfino v. Reiswig, et al.*, 630  
 21 F.3d 952, 956 (9th Cir. Cal. 2011) (“we hold that each defendant is entitled to  
 22 thirty days to exercise his removal rights after being served”).

### 23 **4. JOINDER**

24 Since NBS Default is a fraudulently joined, nominal party in this action, it is  
 25 not required to consent to this removal. *See Emrich v. Touche Ross & Co.*, 846  
 26 F.2d 1190, 1193 (9th Cir. 1988) (general requirement of consent does not apply to  
 27 “nominal, unknown or fraudulently joined parties”). NBS Default appeared in the  
 28 State Court Action on October 9, 2015, only to file a Declaration of Non-Monetary

Status. (*See* Exhibit B). Notwithstanding, NBS Default consents to the removal of this action and has executed a Consent to Removal of Action, which is being filed concurrently herewith. As no doe defendants have been identified or served at this time, no joinder of unserved defendants is required to perfect removal of the State Court Action. *Salveson v. Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir. 1984) (superseded in part by statute on other grounds).

## 5. INTRADISTRICT ASSIGNMENT

This case is being removed to the Central District, Western Division of this Court because the existing State Court Action is pending in Los Angeles County.

## 6. OTHER PERTINENT INFORMATION

A. Pursuant to 28 U.S.C. § 1446(a), defendant Wells Fargo files this Notice in the District Court of the United States for the district and division within which the State Court Action is pending.

B. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice and its attachments will promptly be served on plaintiffs' counsel in the State Court Action, and notice thereof will be filed with the clerk of the Los Angeles County Superior Court.

WHEREFORE, defendants Wells Fargo and BNYM hereby remove Los Angeles County Superior Court Case No. NC060291 to the United States District Court for the Central District of California, Western Division.

Respectfully submitted,

Dated: October 29, 2015

ANGLIN, FLEWELLING, RASMUSSEN,  
CAMPBELL & TRYTTEN LLP

By: /s/ Lynette Gridiron Winston

Lynette Gridiron Winston  
lwinston@afrc.com

Attorneys for Defendants  
WELLS FARGO BANK, N.A. and THE  
BANK OF NEW YORK MELLON

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 and am not a party to this  
3 action. I am employed in the City of Pasadena, California; my business address is 199 S.  
4 Los Robles Avenue, Suite 600, Pasadena, California 91101-2459.

5 On October 29, 2015, I served a copy of the foregoing document entitled:

6 **NOTICE OF REMOVAL BY DEFENDANTS WELLS FARGO BANK, N.A. AND**  
7 **THE BANK OF NEW YORK MELLON PURSUANT TO**  
8 **28 U.S.C. § 1332 [DIVERSITY JURISDICTION]**

9 on the interested parties in said case as follows:

10 **Served By Means Other Than Electronically Via The Court's CM/ECF System:**

11 *Counsel for Plaintiffs:*

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13 LAW OFFICES OF  
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18 **[X] BY MAIL:** I am readily familiar with the firm's practice of collection and  
19 processing correspondence by mailing. Under that same practice it would be  
20 deposited with U.S. Postal Service on that same day with postage fully prepaid at  
21 Pasadena, California in the ordinary course of business. I am aware that on  
22 motion of the party served, service is presumed invalid if postal cancellation date  
or postage meter date is more than one day after date of deposit for mailing in  
affidavit.

23 I declare under penalty of perjury under the laws of the United States of  
24 America that the foregoing is true and correct. I declare that I am employed in the  
25 office of a member of the Bar of this Court at whose direction the service was made.  
This declaration is executed in Pasadena, California, on October 29, 2015.

26  
27 Jill Ashley  
28 (Type or Print Name)

/s/ Jill Ashley  
(Signature of Declarant)